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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 21, 2003

Ms. Rebecca Kane
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
MC 2222A
1200 Pennsylvania Avenue
Washington, DC 20460

Dear Ms. Kane:

Thank you for the opportunity to provide comments on the Environmental Protection Agency's (EPA) Enforcement and Compliance History Online (ECHO) website. TCEQ's primary concerns are ensuring accuracy of data in ECHO and ensuring the user's ability to understand and appropriately interpret the information. We believe that making this information easily available and understandable to the public will reduce staff time for responding to requests for information. We encourage EPA to continue to emphasize that the information provided in ECHO is merely a snapshot of a facility's compliance status and does not necessarily reflect the complete compliance history of a facility.

The Texas Commission on Environmental Quality is pleased to provide the enclosed comments. If you have any questions or need any additional information, please feel free to contact Ms. Carol Batterton, Office of Compliance and Enforcement, at 512-239-6306 or email cbattert@tceq.state.tx.us.

Sincerely,

Margaret Hoffman

Margaret Hoffman
Executive Director

RJH/cvb

Enclosure

02-10-03P03:56 RCVD

cc: Mr. Steve Thompson, Chair, ECOS Compliance Committee, Oklahoma Department of Environmental Quality

Comments from the Texas Commission on Environmental Quality Concerning EPA's Enforcement and Compliance History Online (ECHO) Website

General:

The Texas Commission on Environmental Quality(TCEQ) commends EPA for undertaking and completing a project of this magnitude. We have appreciated EPA's efforts to involve the state's data stewards and EPA's responsiveness to state comments and concerns during the development process.

TCEQ's primary concerns are ensuring accuracy of data in ECHO and ensuring the user's ability to understand and appropriately interpret the information. We believe that making this information easily available and understandable to the public will reduce staff time for responding to requests for information. We encourage EPA to continue to emphasize that the information provided in ECHO is merely a snapshot of a facility's compliance status and does not necessarily reflect the complete compliance history of a facility.

TCEQ's comments in response to the specific questions in EPA's Federal Register Notice are listed below.

Specific Questions for Consideration

1. Does the site provide meaningful and useful information about the compliance and enforcement program?

The facility level status information for CWA compliance data may be difficult for the regulated community to interpret because they may not understand the codes that are used. Even though a data dictionary is provided, it requires substantial program knowledge to understand what is listed in the data dictionary. In some cases, too, the data are contradictory. It will show the facility to be compliant at the facility level status when effluent violations are listed for that quarter if the effluent violations are not SNC. Listing the facility level status as compliant in these cases does not seem appropriate since effluent violations do exist. Because of this difficulty in interpreting facility level status information, facilities have been submitting error reports that have no validity. TCEQ staff then must research the matter and provide the facility with a written explanation of why the data are correct. This is quite time consuming. We suggest that the facility level status information be omitted and only the effluent quality data shown. Effluent quality data are fairly straight forward.

In all programs (air, water and waste), it would be helpful if ECHO provided more specific violation information so facilities would have sufficient detail to compare ECHO to their own records.

2. Is the site easy to navigate?

We have no particular comments or concerns about site navigation.

3. Does the help text adequately explain the data?

The following comments on ECHO text were provided to EPA staff previously by TCEQ staff:

ECHO - Initial Screen

*   The initial screen should include a link to Data Completeness to direct users to the general information about the possibility of incomplete data for smaller facilities. We suggest putting that link at the bottom of the block which includes links to Quality of Data / Known Data Problems / How to Report an Error

About the Site

*   We suggest adding some qualifying statements here to indicate that the data may not be complete for all facilities, particularly smaller facilities. The user could be directed to the section About the Data or Data Completeness.

About the Data - Overview

*   TCEQ suggests adding a qualifying statement to the first sentence: "Four key components of the enforcement process at regulated facilities are documented in EPA databases *for larger facilities and some, but not necessarily all, smaller facilities*." Alternatively, the wording could say *many* smaller facilities.

*   The paragraph on searches is misleading because it implies that inspections, inspection findings, and enforcement actions will be in the database for all facilities. This is not necessarily the case. Some qualifying comments should be added.

*   We suggest bolding or highlighting the first three sentences and the last sentence in the Data Completeness paragraph to draw attention to this information. We also suggest combining the paragraph about What Data are Required with the Data Completeness paragraph so all of this information about data not being complete for smaller facilities is together.

*   In the paragraph on inspections, TCEQ suggests striking the statement "*Most* smaller facilities receive inspections less frequently than every two years" and substituting "*Smaller facilities may receive* inspections less frequently than every two years". The

site should also indicate that inspections for smaller facilities may only be tracked in the state database and not the federal database; therefore, a smaller facility that has actually been inspected may not show an inspection in ECHO.

* We suggest adding a qualifying statement to the first sentence: "The database shows formal EPA or State enforcement actions *for larger facilities and some, but not necessarily all, smaller facilities.*"

About the Data - What Data are Required

* TCEQ suggests bolding or highlighting the third and fourth sentences in this paragraph to draw attention to this information.

* TCEQ recommends that this paragraph come after the one on <u>Data Completeness</u>. In fact, it could be incorporated it into the section on Data Completeness. It would be particularly helpful to combine these two into one section on <u>Data Completeness</u> and to put a link to this <u>Data Completeness</u> section in the introductory screen when you first access the ECHO site (see comment under ECHO - Initial Screen).

About the Data - Table of Data Requirements

* Note (1) should indicate that majors and minors excludes industrial and construction storm water general permittees. These facilities are not captured in the PCS database at this time.

* We suggest that Note (7) indicate that violations noted during inspections are not necessarily required to be entered into PCS.

FAQs - Background/General

* TCEQ recommends a qualifying statement be added in the questions about kinds of information in ECHO and what the data tell you. As stated, the text implies that information will be available on all facilities, when in fact, complete data are only available on larger facilities and some, but not necessarily all, smaller facilities.

* In the question about reliable information, we suggest modification to say EPA has taken *significant* steps (rather than *extraordinary* steps) to ensure that the data are accurate. The QA review that we did in Texas focused primarily on majors and a small subset of minors (the 92-500 minors) that we are required to monitor in detail in PCS. We only did a limited review of the self-reporting data for the rest of the minor facilities (around 1800 facilities).

*   We suggest that the question about whether ECHO contains information about all environmental law violations be moved to the beginning of the list of questions so the reader picks up this information early on. We recommend placing it after the third question on kinds of information that ECHO contains.

*   In the question about the difference between larger and smaller facilities, TCEQ does not agree with the statement that larger facilities are more closely monitored than minor facilities. Texas monitors wastewater minor facilities fairly extensively through inspections and enforcement actions. However, we do not track much of this information on wastewater minors in the federal PCS database; we use our state databases primarily for these facilities. We recommend substituting "larger facilities are *more closely tracked in the federal databases* than minor facilities".

FAQs - Enforcement/Compliance

*   In the question about how compliance and enforcement work is performed by EPA and States, the last statement says the ECHO site includes data regarding both EPA and State inspections, violations, enforcement actions and penalties. We suggest you add: "Information may not be available, however, for all smaller facilities (see link to <u>About the Data</u> or <u>Data Completeness)</u>."

*   In the question about inspections, the site says most smaller facilities receive inspections less frequently than every two years and thus may appear uninspected in the ECHO database. We suggest this be changed to say: "Smaller facilities may receive inspections less frequently than every two years. In addition, inspections conducted at smaller facilities may be tracked only in the state database and not be entered into the federal database. Because of this, a smaller facility may appear uninspected in the ECHO database. Even ~~though~~ if a facility has not been inspected, EPA or the State..."

*   The question on response to violations of environmental laws should say "How do EPA *and States* respond ...." We also suggest a qualifying statement be added somewhere in the text to indicate that formal enforcement actions may not be tracked in the federal databases for all smaller facilities with a reference to see the link on <u>About the Data</u> or <u>Data Completeness</u>.

*   In the question on what does SNC or HPV mean, TCEQ suggests that the second sentence be rewritten as follows: "This designation provides an indication of whether violations or noncompliance events at a given facility may pose a more severe level of ~~environmental~~ concern *for the environment or program integrity*." By stating it this way, it makes a distinction between reporting late, which may not necessarily pose an environmental threat but is a program integrity issue, and an actual release with high level of contaminants, which is an environmental threat.

*   In the question about whether the absence of violations means a facility is in full compliance, it needs to be more clearly indicated that inspections and enforcement actions for smaller facilities may only be tracked in the state database and not the federal database; therefore, the absence of violations in ECHO for smaller facilities is not necessarily a reflection of the actual compliance status of the facility. We also question whether it is appropriate to say that, if recent inspections have been performed and the facility is shown with no violations, users of the ECHO site can be more confident that the facility is in compliance. In the CWA program, even if an inspection record is entered into the PCS database, the inspection findings may not necessarily be entered; therefore, no violations related to that inspection would be shown in the database even if violations were noted during the inspection. If the statement remains, EPA should phrase it as "if ECHO shows a recent inspection" rather than "if recent inspections have been performed."

*   In the question about causes of exceedance, we think it would be more appropriate to give a broader description of causes rather than only making specific statements about municipal facilities and impact of indirect discharges. Also, it is our understanding that the percent over the limit will be shown not only for major facilities but for minor facilities as well. We suggest that this text be rewritten as: "ECHO shows the percent over the limit for CWA direct dischargers. Exceedance may be attributable to a variety of factors, including operation and maintenance problems, design inadequacies, high strength waste from industrial contributors that cannot be adequately treated, and wet weather infiltration/inflow into municipal wastewater treatment systems."

FAQs - Technical

*   In the question dealing with not being able to find a particular facility in the database, it states that all CWA direct dischargers should be listed in ECHO. This is not true, though, because facilities regulated by the industrial multi-sector storm water general permit and the construction storm water general permit are not captured in the PCS database. The statement should probably say that all CWA dischargers should be listed in ECHO, *except for facilities that only discharge storm water runoff.*

FAQs - Comments/Corrections/Data Quality

*   In the question about requesting that an old violation be designated as resolved, we have concerns that this text will mislead facilities into requesting changes that cannot be made which could increase workload for researching the inquiries. In the CWA program, if a DMR is sent in but it is more than 30 days late, it will continue to show as a SNC DMR non-receipt violation for that quarter because of the late receipt. It cannot be changed to a resolved status for that quarter. The same applies to compliance schedule milestone dates that are achieved more than 90 days late and compliance schedule reports that are submitted more than 30 days late. These will continue to show as SNC violations in the quarter in which they were identified as being more than 90 days or 30 days late, and they

cannot be changed to a resolved status for that quarter. It would be helpful if EPA could add a note to this question explaining this situation about CWA violations. It may reduce the number of inquiries and requests for changes that cannot be made.

Data Dictionary - Facility Characteristics

*   Under Facility Status, it is <u>not correct</u> to say that, unlike major permits, most minors do not have monitoring requirements. Minors do have monitoring and reporting requirements in the CWA program.

*   Under Permit Expiration Date, it might be beneficial to add the comment that if an application for reissuance of the permit is submitted prior to the expiration date of the permit, the existing permit may be allowed to remain in effect until action on the application is completed.

Data Dictionary - Inspection and Enforcement Summary Data

*   Under <u>INSP Last 2 (or 5) years</u>, it is misleading to say that this is the number of inspections that have occurred at the facility because inspections are not entered for all facilities. It would be better to say these are the number of inspections entered into the database in the last 2 or 5 years.

*   Under <u>Date of Last Insp</u>, it is misleading to say that this is the date on which the most recent inspection took place, because inspections are not entered for all facilities. There may have been a more recent inspection but it may not have been put into the database. It would be better to say this is the date of the last inspection record entered into the database.

*   Under <u>Formal Enf Act Last 2 (or 5) Years</u>, it is misleading to say that this is the number of formal enforcement actions that have been taken against the facility because enforcement actions are not entered into the database for all facilities. It would be better to say this is the number of formal enforcement actions against the facility that have been entered into the database.

Data Dictionary - Inspection History

*   In the introductory paragraph, we suggest adding a qualifier to the first sentence saying that this section lists inspections that have occurred *and been entered into the database....*

Data Dictionary - Compliance Summary Data

*   Under <u>Current SNC/HPV</u>, instead of saying that SNC facilities may pose a more severe level of environmental threat, we suggest you say that they may pose a more severe level

of concern to the environment or program integrity. We believe this phrasing is needed because SNC failure to report on time is more of a program integrity issue than an actual environmental threat.

* The first explanatory paragraph for CWA SNC Definition is rather confusing and somewhat in error. We suggest that a concise listing of the types of violations that are SNC (as has been done for Air and RCRA) be used and not deal with whether they are manually flagged in the system or automatically flagged by the computer. We recommend the following revision:

"The NPDES program uses the term SNC. SNC designations are made in accordance with the December 12, 1996 guidance document: A General Design for SNC Redefinition Enhancement in PCS. A facility can be designated as a SNC if any of the following are found to exist: violations of effluent limits at levels which meet the SNC criteria in the guidance document; an unauthorized bypass, unpermitted discharge, or pass through of pollutants which causes or has the potential to cause a water quality problem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial use); failure to comply with construction schedule deadlines or pretreatment schedule milestones specified in the permit within 90 days of the scheduled date; failure to submit discharge monitoring reports, pretreatment annual reports and compliance schedule final report of progress within 30 days of the required due date; and violations of judicial or administrative orders.

A facility may have multiple discharge points.....

Removal of the SNC designation occurs....

The most recent quarter for PCS is....."

Data Dictionary - Two Year Compliance Status by Quarter

* TCEQ suggests bolding or highlighting the second paragraph in this section that deals with reasons why the quarterly status measure may not reflect all actual noncompliance events in certain cases.

* Under CWA/NPDES Compliance Status, we believe the statement that it is possible for a facility to have effluent violations but not be out of compliance at the permit level needs to be worded differently. We suggest "...but not be flagged as significantly noncompliant at the permit level. This occurs if the exceedances are not significantly over permit limits."

Also in this part, the example of a single event violation needs to be revised because it is not likely that a violation would be entered for facility just because a facility discharges to a water body that had a fish kill. We recommend "For example, an unauthorized

discharge from a facility's wastewater collection system that causes a fish kill might be entered as a single event violation."

* Under Compliance Schedule Violations, EPA should add that this section will also not be shown if a compliance schedule exists, but it is not being tracked in the database. (In Texas we do not track compliance schedules in PCS for most minors; we do it only for a small subset of 92-500 minors.)

* Under Single Event Violations, it does not seem accurate to say that single event violations are violations not related to permit requirements. These type of violations can be related to permit requirements that are monitored through inspections rather than through self-reporting or compliance schedule tracking. An example might be a facility not maintaining certain records that are only required to be kept at the facility. This would require an inspection to identify the violation.

EPA should also add that this section will not be shown if single event violations exist but they are not being tracked in the database.

4. What additional features, content, and/or modifications would improve the site?

We recommend deleting the facility level status information for CWA compliance data because it is too confusing for users.

Under the section for Inspection and Enforcement Summary Data, if there are no inspection data in PCS for a CWA facility, the system should indicate "no data records returned" instead of saying "never" under Date of Last Inspection. This is a more appropriate way to portray the information, since not all inspections are entered into PCS. The facility may have been inspected recently, but the inspection may only be tracked in the state database and not in the federal database. Likewise, if there are no formal enforcement action data in PCS for a CWA facility, the system should indicate "no data records returned" instead of saying "0". Formal enforcement actions are not entered for all CWA facilities. There may have been a formal enforcement action but that action may only be tracked in the state database and not the federal database. Using the phrase "no data records returned" in this section would be consistent with how lack of data are displayed in other sections of the facility report.

The two year compliance status data by quarter for CWA facilities is a roll up of data for the quarter with only the highest level violation noted. Specific details about the violation are not provided. Because of this, both the user and data stewards have to research all of the data for the quarter using other sources (DMRs, Envirofacts, PCS, etc.) to determine what the specific violation is. This is not always easy to do, even for those of us who are regulators and quite familiar with the data. It would be more useful if information about the specific violation was provided. In addition, a roll-up of data may not be the best method to display a facility's compliance status because it only shows the highest level violation for the quarter; other

violations that occurred during the quarter are not listed. We would prefer listing all of the actual violations for a quarter by the month in which they occurred - not just the single highest level violation.

For the air and waste programs, ECHO might be more useful if it included specific violation information for unresolved violations. This would give facility affiliates sufficient detail to research their records and make more accurate and specific inquiries via the error notification system when necessary.

Additional Comments:

TCEQ has experienced a substantial increase in workload in response to error notifications and subsequent research required to verify or resolve the errors. We have had some feedback and comment from our regulated entities including:

- CWA regulated entities have asked us to explain the listing of data for the two year compliance status because they do not know how to interpret it. Most of the confusion is over the facility level status information.

- CWA regulated entities have expressed concern that when certain data is not entered into PCS within a short time frame from receipt, the system automatically flags the facility as in significant noncompliance. This requires time for the permittee as well as the agency to resolve.

- Regulated entities have requested that data be flagged as soon as an error request is received so that other users will know that the data is under review. Once corrections have been identified, the data should be immediately uploaded.

- Regulated entities have expressed concern that anyone, including a member of the general public, can file a correction request. They believe that the data error correction process should be limited to the owner or operator of the facility in question.

- Regulated entities have requested a glossary of terms to help further the public's understanding of the information.